Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	
Support Mechanism	)	CC Docket No. 02-6
	)	
	)	

INITIAL COMMENTS OF SUNESYS, INC.

Sunesys, Inc. ("Sunesys") appreciates the efforts of the Federal Communications Commission ("Commission" or "FCC") to examine and revise the rules governing the Universal Service Support Mechanism for Schools and Libraries (commonly known as "E-Rate") so that the program may function more efficiently and equitably. Sunesys is a competitive local exchange carrier that provides service in numerous states, including Pennsylvania, New Jersey and Virginia. Sunesys, therefore, is a contributor to universal service support mechanisms. In addition, Sunesys provides E-rate eligible service to schools, and therefore, obtains payments from E-rate. Sunesys typically provides priority one telecommunications services to applicants using fiber facilities.

Sunesys's comments are directed primarily at two issues raised in the Further Proposed Notice of Rulemaking. First, the definition of eligible fiber service should be clarified. While leased dark fiber has been permitted as an eligible service since the inception of the E-rate program in 1997, the fund administrator has signaled a change in the eligibility classification of dark fiber, and deemed it to be ineligible for Fund Year 2004 and later, pending further direction from the FCC.[1] This change in course means that existing multi-year agreements which applicants and services providers negotiated based on prior guidance from the fund administrator that dark fiber is eligible for discounts no longer qualify for E-rate funding. This change of direction occurred without any prior notice or opportunity to comment being afforded to interested parties. These procedural deficits alone are patently unfair and should be rescinded. Rather than maintaining the status quo of continuing to classify dark fiber as an eligible service, the fund administrator instead altered the status quo despite the fact that admittedly the FCC had not issued any policy guidance. The FCC should restore the status quo and continue to allow dark fiber service to be eligible for discounts for Fund Year 2004 and beyond.

Alternatively, the FCC should clarify that applicants and service providers currently subject to a dark fiber leasing agreement should be allowed to modify their contract and service relationships, to the extent both parties are willing and able, so that the service may be converted to a lit fiber service.

Specifically, the Commission should expressly clarify that the optical equipment serving as a single basic terminating component, referenced in paragraph 49 of the Third Report and Order, that a TX to FX converter would qualify as the modulating electronics necessary to provide end-to-end telecommunications service or Internet access.

[1] *See* SLD's Eligible Services List, which states, "The FCC has not resolved whether unlit dark fiber is a telecommunications service. Pending resolution of this issue, it is not eligible for funding. (Effective for Fund Year 2004 and later years).

Equally as important, the Commission should clarify and prescribe in its rules and regulations the precise requirements for a service provider to qualify as a common carrier. The determination of whether a telecommunications carrier is a common carrier requires more than a verification that a carrier may possess a certificate of public convenience. In light of the revised entry procedures that many states have enacted since the Telecommunications Act of 1996 has been passed, a carrier may be able to demonstrate that it has received a certificate, but may conduct its operations in a manner that is antithetical to common carriage. If a carrier has obtained a certificate so that it can qualify to provide priority one services under E-rate, the carrier must be able to demonstrate that its service constitutes common carrier service. The carrier must show that it holds itself out to the public as a public utility; that it will not discriminate; that it advertises the availability of its services; that the carrier's scope of operations evidences its intent to hold itself out to the public. The common carrier classification of each telecommunications carrier should be validated and publicized on the USAC web site, so that all applicants will know in advance of contracting for services whether the carrier has been verified as a common carrier. The current procedure, which lists each service provider's SPIN and whether the service provider's self-designation as a common carrier provides no assurance to applicants that the carrier in fact is an eligible telecommunications common carrier. The applicant runs the risk of contracting for services with a self-designated common carrier that may ultimately be classified by USAC as a non-common carrier.

Second, the Commission specifically sought comment on whether there should be standard for determining whether infrastructure investment by a service provider can be viewed as Priority 1, such as a limit on such expenses not to be greater than 25% of the funding request. (Paragraph 74). The Commission also asked whether an upfront non-recurring charge for a WAN infrastructure investment should be spread over five years, rather than three years. A 25% restriction does not give any consideration to the scope of a project. For example, a larger district may have more buildings to connect to each other, which may require proportionally larger installation charges for building access and termination. These charges are not necessarily capital infrastructure costs, but are legitimately classified as nonrecurring charges. Likewise, by requiring the nonrecurring costs to be recovered over five rather than three years, the project economics will inevitably change, and may result in increasing the annual or recurring costs, to reflect the longer recovery period of the nonrecurring charges. The overall project cost could ultimately be greater rather than lower, by imposing the 25% restriction and/or 5 year recovery period for all nonrecurring charges.

Respectfully submitted,

By: ____________________________

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